

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

This Document Relates to:

Stormy Burks v. Bayer Corp., et al. No. 3:10-cv-12640-DRH-PMF¹

Melissa Gillette v. Bayer Corp., et al. No. 3:10-cv-12239-DRH-PMF

Kelsey Lagerstrom v. Bayer Corp., et al. No. 3:10-cv-12627-DRH-PMF

Christine Lagesse v. Bayer Corp., et al. No. 3:10-cv-12788-DRH-PMF

Julie Pace v. Bayer Corp., et al. No. 3:10-cv-11421-DRH-PMF

Renee Richter v. Bayer Corp., et al. No. 3:10-cv-10352-DRH-PMF

Dabrittany Stevenson v. Bayer Corp., et al. No. 3:10-cv-12923-DRH-PMF

Yvette Sylvia-Booth v. Bayer Corp., et al. No. 3:10-cv-12562-DRH-PMF

ORDER

HERNDON, Chief Judge:

This matter is before the Court on defendant Bayer HealthCare Pharmaceuticals Inc.'s ("Bayer") motion, pursuant to Case Management Order 12

¹ Bayer filed identical motions and exhibits in each of the above captioned actions (See e.g., *Burks* 3:10-12640 Doc. 6, Doc. 6-1, and Doc. 6-2). For purposes of brevity, this Order references the document number for the motion and exhibits filed in the *Burks* member action.

(“CMO 12”), for an Order dismissing plaintiffs’ claims, in the above-captioned matters, without prejudice for failure to comply with their Plaintiff Fact Sheet (“PFS”) obligations.² Bayer contends that the plaintiffs in the above-captioned matters were required to serve a completed PFS on or before January 16, 2011 but have not done so.³

Under Section E of CMO 12, **plaintiffs were given 14 days from the date of Defendant’s motion**, in this case 14 days from March 8, 2011, to file a response either certifying that they served upon defendants and defendants received a completed PFS, and attaching appropriate documentation of receipt or an opposition to defendant’s motion.⁴

² Under Section C of CMO 12, each plaintiff is required to serve defendants with a completed PFS, including a signed declaration, executed record release authorizations, and copies of all documents subject to the requests for production contained in the PFS which are in the possession of plaintiff. Section B of CMO 12 further provides that a completed PFS is due “45 days from the date of service of the first answer to her complaint or the docketing of her case in this MDL, or 45 days from the date of this Order, is whichever is later.”

³ See Burks Doc. 6 p. 2, Doc. 6-1, and Doc. 6-2.

⁴ Responses to Bayer’s motion to dismiss were due 14 days from March 8, 2011 regardless of any response date automatically generated by CM/ECF. The Court has previously noted in orders in this MDL and during a status conference in this MDL that **when deadlines provided by CM/ECF conflict with orders of this Court, the Court ordered deadline will always control**. See United States District Court for the Southern District of Illinois, Electronic Filing Rules, Rule 3 (The “filer is responsible for calculating the response time under the federal and/or local rules. The date generated by CM/ECF is a guideline only, and, if the Court has ordered the response to be filed on a date certain, the Court’s order governs the response deadline.”). The deadlines provided by CM/ECF are generated automatically based on the generic responsive pleading times allowed under the rules and do not consider special circumstances (such as court orders specific to a particular case or issue).

To date, none of the plaintiffs in the above captioned member actions has filed a response. Because the plaintiffs in the above captioned cases have failed to respond to Bayer's allegations, the Court finds that these plaintiffs have failed to comply with the PFS obligations under CMO 12. Accordingly, the Court hereby **ORDERS** as follows:

- The **above captioned member actions** are **DISMISSED WITHOUT PREJUDICE** for failure to comply with the requirements of CMO 12.
- **Further**, the Court reminds plaintiffs that, pursuant to CMO 12 Section E, **unless plaintiffs serve Defendants with a COMPLETED PFS or move to vacate the dismissal without prejudice within 60 days after entry of this Order, the Order will be converted to a Dismissal With Prejudice upon defendants' motion.**

SO ORDERED

David R. Herndon



Digitally signed by
David R. Herndon
Date: 2011.03.28
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Chief Judge
United States District Court

Date: March 28, 2011